

REMARKS

1. Status of the Claims

Claims 1-13 are pending in this Application. Claims 3, 10, 12 and 13 have been canceled. By this Response, Applicant amended Claims 1 and 4. Applicant respectfully submits no new matter was added and that the amendments are fully supported by the application as originally filed. Accordingly, Claims 1-2, 4-9 and 11 are at issue.

Applicant respectfully submits that the above amendments to the claims also overcome the objections of claims 4-6 under 37 CFR 1.75(c), and under 35 U.S.C. §112, second paragraph.

2. Rejection of Claims under 35 U.S.C. 103(a)

Claims 1-2 and 4-5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. US2003/0040934 to Skidmore et al. in view of an article by Gravesen et al., "Microfungal Contamination of Damp Buildings - Examples of Risk Constructions and Risk Materials." Applicant respectfully submits that combination of the cited references is improper, but even if proper, Applicant's invention is patentable over the combination of references.

The present invention is directed to a method and system for assessing a building's propensity to foster mold growth. The method includes an inspection form and a calculator for determining a mold risk score from certain graded variables recorded on the form. The method also includes providing an action item list to reduce the mold risk score.

Skidmore et al. describes an automated generation of a home inspection report according to information gathered by a home inspector during the inspection of a home. Specifically, Skidmore et al. describes a system that creates a home warranty inspection policy customized for that particular home (Paragraph 7). Skidmore et al. utilizes a computer readable medium for receiving inspection information and creates a warranty based on the inspection information. Skidmore et al., however, does not disclose a system or method for determining a building's

propensity for mold growth, nor does Skidmore et al. disclose a method for calculating a mold risk score or suggested solutions for reducing the mold risk score.

The Gravesen article is directed to a study conducted on 72 mold infected building materials from 23 buildings, leading to an identification of construction types and materials susceptible to humidification and subsequent infestation of mold (Abstract). In Gravesen, it is given that mold develops on material damaged by water; however, Gravesen does not develop a mold risk score for the **propensity** of a building to develop mold. Rather, using limited parameters (0 or 1) Gravesen develops a system relating to extent materials already damaged by water will develop mold. Therefore, Gravesen does not address a system for determining a propensity for a building to develop mold based on a mold risk score, but rather, Gravesen is a study for the purpose of identifying water damaged constructions and building materials critical for mold contamination, the most frequently encountered molds on the infested building materials and the possible harmful fungal metabolites produced in these materials (page 1 of Gravesen).

Initially, combination of the references is improper as there is no motivation in the references to combine them. *See In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1785 (Fed. Cir. 1995). There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination of references feasible. That knowledge cannot come from the Applicants' invention itself. *See In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992) (citing *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 678-79 (Fed Cir. 1988)); *In re Geiger*, 815 F.2d 686, 687 (Fed. Cir. 1987); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1147 (Fed. Cir. 1985). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (citing *In re Gormyan*, 933 F.2d 900, 902 (Fed. Cir. 1984)).

Certainly, this rationale is applicable in the present case. Skidmore et al. teaches a computerized home inspection system and method, which includes collecting information from a physical home inspection leading to the creation of a customized home warranty insurance policy. The Gravesen article is a pilot study conducted for the purposes of identifying water damaged constructions and building materials critical for mold contamination. Gravesen does not determine **if** a material will develop mold, but to what extent the mold will develop, as its development is a given under the conditions. Neither reference discloses assessing a building's propensity for mold growth by determining a mold risk score. Therefore, it does not follow to combine the Gravesen article, a study on mold on water damaged materials, with the computerized home inspection/warranty system of Skidmore et al. to arrive at Applicant's invention, which is a system for assessing a building's propensity to foster mold growth and calculating a mold risk score.

Claims 3, 6-9 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Skidmore in view of Gravesen and further in view of an article by NAHB Research Center, "Mold in Residential Buildings," Toolbase Technotes, July 24, 2001. Claim 3 is canceled.

Skidmore and Gravesen were discussed above. The addition of the NAHB reference does not overcome the deficiencies of the combination of Skidmore and Gravesen to render the present invention unpatentable. The NAHB article does not provide any form of assessment for calculating a mold risk score, yet the NAHB article is being cited for the premise that it "discloses a list of suggestive solutions to reduce the mold risk score." Applicant respectfully submits that while the NAHB article provides a list of strategies to help minimize mold growth, it **does not** specify solutions to reduce a mold risk score. The NAHB article does not include a calculation of a mold risk score, nor does it address Applicant's invention of determining a mold propensity factor for a particular building.

The cited references, alone or in combination, do not teach the present invention. Skidmore et al. teaches a computerized home inspection system and method, which includes

collecting information from a physical home inspection leading to the creation of a customized home warranty insurance policy. It is noted in the Office Action that neither Skidmore nor Gravesen disclose the action item list including solutions to reduce the mold risk score. The NAHB article is a primer on mold in residential buildings, and is meant to provide “an overview of some of the mold issues and to alleviate undue concern about mold in indoor environments.” The NAHB article, however, does not teach a system or method for determining a building’s propensity for developing mold or calculating a mold risk score; therefore it does not follow to state that the NAHB article provides solutions to reducing a mold risk score. Thus, it does not follow to combine the NAHB article, which is merely a primer on mold in residential buildings, with the computerized home inspection/warranty system of Skidmore et al. and the article of Gravesen to arrive at Applicant’s invention.

Even if the combination was proper, Applicant’s invention is patentable over the combination. The present invention is directed to a method and system for assessing a building’s propensity to foster mold growth, including calculation of a mold risk score and generation of an action list based on that score. Skidmore et al. is directed to a computerized home inspection system and method, which includes collecting information from a physical home inspection leading to the creation of a customized home warranty insurance policy. The deficiencies of Skidmore and Gravesen were previously discussed, and the addition of the NAHB article does not overcome the deficiencies to arrive at the present invention. Skidmore et al. does not provide a calculator for determining a mold risk score. The NAHB article is a primer to mold in residential buildings and does not address calculation of a mold risk score or provide solutions to reduce the calculated score. Applicant submits claims 6-9 and 11 are patentable over these references.

Atty Docket No. 77400-0011
U.S. Application No. 10/779,994

Page 9

CONCLUSION

In light of the foregoing reasons, Applicant respectfully requests reconsideration and allowance of claims 1-2, 4-9 and 11. The Commissioner is authorized to charge any additional fees or credit any overpayments associated with this Amendment to Deposit Account 13-0206.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on November 26, 2007.

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